

EXHIBIT 12

MAO DECLARATION OPPOSITION TO GOOGLE'S MOTION TO EXCLUDE LASINSKI

DOCUMENT SOUGHT TO BE SEALED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANIBAL RODRIGUEZ, et al.,
Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No.

3:20-cv-04688-RS

HIGHLY CONFIDENTIAL -
ATTORNEYS' EYES ONLY
ZOOM VIDEOTAPED DEPOSITION OF
DONNA L. HOFFMAN, Ph.D.
Tuesday, July 11, 2023
10:15 a.m. PDT

TAKEN BY:

ALEXANDER FRAWLEY, ESQ.
ATTORNEY FOR PLAINTIFF

REPORTED BY:

BELLE VIVIENNE, RPR, CRR, NJ-CRR,
WA/CO/NM-CCR
NATIONALLY CERTIFIED REALTIME
COURT REPORTER
VERITEXT LEGAL SOLUTIONS
JOB NO. 5996122
866.299.5127

A P P E A R A N C E S

FOR THE PLAINTIFFS:

ALEXANDER FRAWLEY
SUSMAN GODFREY LLP
1301 Avenue of the Americas
32nd Floor
New York, New York 10019
Afrawley@susmangodfrey.com
MARK MAO
BOIES SCHILLER FLEXNER LLP
44 Montgomery Street, 41st Floor
San Francisco, California 94104
Mmao@bsfllp.com

FOR THE DEFENDANT:

SIMONA AGNOLUCCI
ARGEMIRA FLOREZ
WILLKIE FARR & GALLAGHER LLP
One Front Street, 34th Floor
San Francisco, California 94111
Sagnolucci@willkie.com
aflorez@willkie.com
JOHN JANHUNEN
GOOGLE
1600 Amphitheatre Parkway
Mountain View, California 94043
Jjanhunen@google.com

VIDEOGRAPHER:

Jefree Anderson
Kristof Zetenyi

1 A. Go ahead. Where were we? 13:19:21

2 Q. Yeah, I'll just re-ask my 13:19:23

3 question. 13:19:25

4 A. Thank you. 13:19:26

5 Q. Are you aware of any 13:19:26

6 specific examples where an internet 13:19:28

7 company paid users for data? 13:19:30

8 MS. AGNOLUCCI: Object to scope. 13:19:33

9 A. I'm sorry. Excuse me. 13:19:37

10 Something about your question is 13:19:50

11 triggering it. I just unplugged it. I'm 13:19:52

12 sorry. 13:19:55

13 The best way I can answer 13:19:56

14 that is that I've been studying online 13:19:58

15 consumer behavior, internet business 13:20:03

16 models and e-commerce since the mid '90s 13:20:05

17 and I am probably, you know, the -- I 13:20:09

18 know that has been hypothetically 13:20:11

19 proposed and it's possible it's been -- 13:20:13

20 it's actually happened, but off the top 13:20:17

21 of my head, I can't give you any 13:20:19

22 examples. 13:20:21

23 BY MR. FRAWLEY: 13:20:21

24 Q. Okay. You prepared an 13:20:39

25 expert report and served the expert 13:20:46

1 report in a case for Google against the 13:20:48
2 Arizona Attorney General; is that right? 13:20:51
3 A. Yes. 13:20:54
4 Q. Okay. Did you consult that 13:20:58
5 report in the process of preparing your 13:21:04
6 report in this case? 13:21:06
7 MS. AGNOLUCCI: Object to form. 13:21:07
8 A. I -- yes. 13:21:11
9 BY MR. FRAWLEY: 13:21:11
10 Q. Please elaborate on how you 13:21:15
11 consulted that report in the process of 13:21:17
12 preparing your report for this case. 13:21:18
13 A. That report concerned dark 13:21:20
14 patterns and I consulted a few of the 13:21:23
15 paragraphs relating to dark patterns. 13:21:26
16 Q. And did you copy any of 13:21:32
17 those paragraphs from that report into 13:21:34
18 this report? 13:21:36
19 A. No. 13:21:37
20 Q. So would it surprise you if 13:21:44
21 some of the material in your report for 13:21:47
22 this case is identical or almost 13:21:48
23 identical to the paragraphs from that 13:21:51
24 opinion? 13:21:53
25 A. No. 13:21:54

1 Q. Why wouldn't that surprise 13:21:55
2 you? 13:21:57
3 A. Well, because I have 13:21:58
4 opinions that I have formulated about 13:22:01
5 dark patterns, for example, that they are 13:22:03
6 a vague and nebulous construct. So it 13:22:06
7 wouldn't surprise me that might be in 13:22:09
8 both reports because there's only one way 13:22:11
9 to say that, and so it would not surprise 13:22:14
10 me that fragments or sentences here and 13:22:16
11 there of my own words have appeared in 13:22:20
12 same or similar structure in both 13:22:24
13 reports. I -- I mostly consulted the 13:22:26
14 previous report for some of the 13:22:32
15 references to the dark pattern 13:22:34
16 literature. 13:22:35
17 Q. Fair to say then that some 13:22:36
18 opinions you offer in that case at least 13:22:45
19 overlap with opinions you're offering in 13:22:48
20 this case? 13:22:50
21 MS. AGNOLUCCI: Object to form. 13:22:51
22 A. Yes. 13:22:52
23 BY MR. FRAWLEY: 13:22:52
24 Q. And is that why you 13:23:02
25 consulted that report in the process of 13:23:03

1 preparing this case's report? 13:23:06

2 A. No. 13:23:08

3 Q. Can you look at table 7 on 13:23:18

4 page 71 of your report in this case? 13:23:24

5 A. I'm there. 13:23:34

6 Q. Do you see the middle cell 13:23:38

7 in the table? 13:23:40

8 A. Yes. 13:23:42

9 Q. And do you see where you 13:23:44

10 wrote in the right column, middle cell, 13:23:45

11 middle row, "Mr. Schneier has not shown 13:23:47

12 why Google's settlement with the Arizona 13:23:59

13 Attorney General is relevant to this 13:24:01

14 case. The Arizona matter was specific to 13:24:03

15 Google's alleged location-tracking 13:24:07

16 practices, and is irrelevant to the 13:24:09

17 claims of this case"? 13:24:10

18 Do you see that? 13:24:12

19 A. I do. 13:24:13

20 Q. This Arizona case being 13:24:15

21 talked about in this cell is the case 13:24:17

22 where you offered an expert report, 13:24:20

23 correct? 13:24:22

24 A. Yes. 13:24:23

25 Q. And you admitted a moment 13:24:29

1 ago that you consulted that report in the 13:24:30
2 process of preparing your report in this 13:24:33
3 case, right? 13:24:35

4 A. Yes. As I testified, I went 13:24:37
5 to look up the references that I used for 13:24:39
6 the dark pattern literature, and then for 13:24:42
7 this report, I did additional research on 13:24:46
8 dark patterns. 13:24:50

9 Q. Did you use any of the 13:24:51
10 references from the Arizona -- from your 13:24:55
11 Arizona report in your report for this 13:24:57
12 case? 13:24:59

13 A. Yes. 13:24:59

14 Q. How can it be proper for an 13:25:05
15 expert to borrow material from a prior 13:25:08
16 report in a different case? 13:25:10

17 MS. AGNOLUCCI: Object to form. 13:25:13

18 A. I'm borrowing, to use your 13:25:16
19 term, academic literature, which is quite 13:25:19
20 common to cite the same papers in 13:25:23
21 subsequent work. So I'm -- I don't -- I 13:25:27
22 don't see the problem here. 13:25:33

23 BY MR. FRAWLEY: 13:25:33

24 Q. Can you help me understand 13:25:37
25 how you think it was proper to, again, my 13:25:38

1 words, borrow that material, even though 13:25:41
2 here in your report in this case on page 13:25:43
3 71, you're saying that that matter is 13:25:45
4 "irrelevant to the claims of this case"? 13:25:49

5 A. The material that I cited in 13:25:54
6 that report as well as this report refers 13:25:57
7 to the academic literature on dark 13:26:00
8 patterns. That is relevant -- that was 13:26:03
9 relevant in some aspects to that case and 13:26:06
10 that is relevant in some, yet different 13:26:10
11 aspects, in this case. In my mind, it's 13:26:13
12 entirely possible that the literature on 13:26:16
13 dark patterns could be relevant to dozens 13:26:19
14 of cases. And -- and I would be 13:26:22
15 required, if I was doing my job, to cite 13:26:27
16 the same papers so that I could do a 13:26:29
17 thorough survey of the literature. 13:26:33

18 Q. So having just talked about 13:26:35
19 this, do you still agree with your 13:26:41
20 statement on page 71 that the Arizona 13:26:43
21 matter is irrelevant to the claims of 13:26:46
22 this case? 13:26:48

23 A. My statement, if you read my 13:26:50
24 entire statement -- again, I'm a rebuttal 13:26:52
25 witness, and my job was to rebut 13:26:56

1 Mr. Schneier's claims regarding whether 13:26:58
2 Google's WAA and the sWAA disclosures 13:27:03
3 displayed dark patterns. And I point out 13:27:08
4 in this cell that Mr. Schneier, and the 13:27:12
5 burden is on Mr. Schneier, not me, to 13:27:16
6 show why Google's settlement in that case 13:27:19
7 is relevant to this case. 13:27:21

8 He has not done that and 13:27:24
9 that case was related to location 13:27:26
10 tracking and that has nothing to do with 13:27:28
11 this case. 13:27:32

12 Q. So your opinion is that 13:27:36
13 location tracking specifically has 13:27:37
14 nothing to do with this case? 13:27:39

15 MS. AGNOLUCCI: Object to form. 13:27:41

16 A. My opinion is that that case 13:27:44
17 was regarding a different matter. It may 13:27:47
18 have had to do with dark patterns, but 13:27:50
19 how it had to do with dark patterns was 13:27:52
20 different than how this case has to do 13:27:54
21 with dark patterns, but the cases are not 13:27:57
22 the same case. 13:28:01

23 And Mr. Schneier, whom I'm 13:28:02
24 rebutting, attempts to argue that, well, 13:28:06
25 Google was involved in this other matter 13:28:10